

ESTTA Tracking number: **ESTTA723614**

Filing date: **01/29/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217589
Party	Plaintiff Rhythm Holding Limited
Correspondence Address	JOHN L WELCH WOLF GREENFIELD & SACKS PC 600 ATLANTIC AVENUE BOSTON, MA 02210 UNITED STATES jlwtrademarks@wolfgreenfield.com
Submission	Motion to Compel Discovery
Filer's Name	John L. Welch
Filer's e-mail	jlwtrademarks@wolfgreenfield.com
Signature	/johnlwelch/
Date	01/29/2016
Attachments	91217589 Opposer's Motion to Compel Discovery.PDF(2470846 bytes)

RHYTHM HOLDING LIMITED,)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	91217589
J & N SALES, LLC,)	
)	
Applicant.)	
)	

Opposer RHYTHM HOLDING LIMITED, by its counsel, hereby moves for an Order compelling Applicant J&N SALES, LLC, to respond properly and fully to certain of Opposer's admission requests, interrogatories, and production requests, as set forth below. In compliance with Trademark Rule 2.120(e)(1), Opposer confirms that it has made a good faith effort to resolve or narrow the matters in dispute through correspondence with Applicant's counsel. As a result, some of the disputed matters have been resolved or withdrawn, while the matters raised in this motion require consideration by the Board.

In particular, Opposer Rhythm requests that the Board order Applicant to provide proper and complete responses to (i) Admission Requests Nos. 3-14, 16-23, 33-36, 37-38, 40, 42-44, 46-54, 56-60, 62, 64, and 66 of Opposer's Requests for Admission, (2) Interrogatory No. 19 of Opposer's Second Set of Interrogatories to Applicant, and (3) Production Requests Nos. 10, 11, 16, 21, 25, 26-30, and 36-38 of Opposer's first and

second set of production requests. Opposer also requests that the Board order Applicant to produce the documents requested in said production requests.

I. INTRODUCTION

This opposition proceeding was commenced on July 23, 2014. Applicant J&N Sales seeks to register the mark RHYTHM IN BLUES, in standard character form, for various clothing items. Opposer has alleged a likelihood of confusion with its registered marks RHYTHM and RHYTHM LIVIN for overlapping clothing items. Standing is not an issue, nor is priority of use. Neither the opposed application nor the pleaded registrations contain any limitation as to channels of trade or classes of consumers.

Opposer Rhythm has served two rounds of discovery requests, the first in November 2014, and the second in September 2015. As to the first round, the parties have resolved a number of issues that were in dispute with regard to Applicant J&N's responses. Only a handful of items regarding the responses to Rhythm's first set of Requests for Production remain unresolved, and they will be discussed below.¹ In this motion, Opposer Rhythm has chosen not to pursue the issues regarding Applicant's responses to Opposer's First Set of Interrogatories (although those issues are mentioned in the attached correspondence between counsel).

As to Opposer's second round of discovery requests – comprising admission requests,² interrogatories,³ and production requests⁴ – there are a number of items in

¹ OPPOSER'S REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS, served on November 11, 2014, and attached hereto as Exhibit 1.

² OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT, served on September 28, 2015, is attached hereto as Exhibit 2.

³ OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT, served on September 28, 2015, is attached hereto as Exhibit 3.

⁴ OPPOSER'S SECOND SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS, served on September 28, 2015, is attached hereto as Exhibit 4.

dispute. Attempts were made through correspondence to resolve these disputes, but were unsuccessful. Opposer's counsel requested a telephone discussion with Applicant's counsel on at least five separate occasions, but Applicant's counsel declined to make himself available for same.

On January 14, 2016, Opposer's counsel wrote to Applicant setting forth the discovery issues in dispute and requesting a telephone discussion.⁵ Applicant's counsel responded by letter of January 25, 2016,⁶ maintaining its objections to the discovery requests in dispute. On January 26th, Opposer's counsel again requested a telephone conference to discuss the disputed issues, but Applicant's counsel did not respond to that request.⁷

In this motion, Opposer shall first address Applicant's responses and objections to Opposer's admission requests, then to its interrogatory 17, then to its production requests.

II. Applicant's Responses to Opposer's Admission Requests

Applicant's Responses to Opposer's Admission Requests are appended as Exhibit 8 to this motion. As indicated in Rhythm's letter attached as Exhibit 5, the admission requests here in dispute are Nos. 3-14, 16-23, 33-36, 37-38, 40, 42-44, 46-54, 56-60, 62, 64, and 66.⁸ Applicant's objections to those admission requests fall into three categories:

⁵ Exhibit 5, letter from John L. Welch to James A. Power, Jr., dated January 14, 2016.

⁶ Exhibit 6, letter from James A. Power, Jr. to John L. Welch, dated January 25, 2016.

⁷ See Exhibit 7, email from John L. Welch to James A. Power, Jr., dated January 26, 20 at 9:02 AM.

⁸ Applicant appended to its objections a statement that it "denied the requested admission." In an email dated January 7, 2016, in response to Opposer's inquiry, Applicant explained these "denials," stating that "Opposer is not entitled to answers to admission requests that are improper or objectionable. On the other hand, applicant denied a request in many cases at least in part to avoid an admission by default, as the rule suggests that requests not denied might be deemed admitted."

(1) objections that assert that the request “does not seek admission of facts, the application of law to fact, or opinions about either” (Requests 3-14, 16-17, 42-44, 62, 64, and 66);

(2) objections that assert that the request seeks information that is “not material to this proceeding and is not calculated to lead to the discovery of admissible evidence” (Requests 18-23, 37-38, and 46-54); and

(3) objections that assert that the request is “vague and indefinite, not calculated to lead to the discovery of admissible evidence, and does not seek admission of facts, the application of law to fact, or opinions about either” (Requests 33-36, 40, and 56-60).

With regard to category 1 – in which each request purportedly “does not seek admission of facts, the application of law to fact, or opinions about either” – Opposer submits that Requests 3-14 seek the admission of facts regarding the application herein opposed, and are therefore proper under Rule 36 FRCP.⁹ Requests 16-17 (purchaser care), 42-44 (relatedness of goods), and 62, 64, and 66 (validity of pleaded registrations) seek the admission of facts or opinions about facts, again proper under Rule 36. Applicant was asked to re-consider and withdraw its objections to these requests, but refused to do so.

With regard to category 2 – in which each request purportedly “does not seek admission of facts, the application of law to fact, or opinions about either” – Requests 18-23 seek relevant information regarding applicant’s goods because they are directed to whether the word “blue” in applicant’s mark is merely descriptive of the identified goods. Requests 37-38 are relevant to applicant’s intent in adopting the opposed mark. Requests

⁹ FRCP 36 states, in pertinent part, that admission requests may relate to “facts, the application of law to fact, or opinions about either.”

46-54 are relevant to establishing the meaning or connotation of applicant's mark.

Applicant was asked to re-consider and withdraw its objections to these requests, but refused to do so.

Turning to category 3 – in which each request purportedly is “vague and indefinite, not calculated to lead to the discovery of admissible evidence, and does not seek admission of facts, the application of law to fact, or opinions about either” –

Requests 33-36 are quite plain and straightforward. They seek admissions of facts about the overlap in goods between the pleaded registrations and the opposed application.

Request 40 is likewise plain and straightforward, and seeks admissions of fact that are relevant to establishing that applicant's standard character mark may be used in a form that increases the likelihood of confusion with opposer's marks. Requests 56-60 are also plain and straightforward, and seek admissions as to facts or opinions about facts that are relevant to the descriptiveness of the word “blues” in applicant's mark and thus relevant to the issue of likelihood of confusion. Applicant was asked to re-consider and withdraw its objections to these requests, but refused to do so.

In sum, there is nothing oppressive or burdensome, and nothing vague or incomprehensible, about these admission requests. They fall well within the boundaries of FRCP 36, and there is no legitimate bases for objecting to them. Applicant should be ordered to provide proper and complete responses thereto.

III. Applicant's Responses to Opposer's Second Set of Requests for the Production of Documents and Things

Applicant's responses to Opposer's Second Set of Requests for the Production of

Documents and Things is attached as Exhibit 4 to this motion. Applicant's responses are attached as Exhibit 9.

The three requests that comprise Opposer's second set of production requests are clear and simple. Request 36 seeks documents supporting Applicant's denials or partial denials of Opposer's admission requests. This is a standard production request, and yet Applicant poses its usual boilerplate objections that are little more than gibberish. For example, Applicant makes the nonsensical objection that the request seeks documents that "support or substantiate a negative." Applicant also vaguely asserts that some documents "shall be produced ... pursuant to pre-trial disclosure and rules." That objection, of course, makes no sense, since the pre-trial disclosure rules do not call for the production of documents. Put simply, Applicant is stonewalling and should be ordered to produce the documents falling within this request once it has properly responded to Opposer's admission requests.

Production Request No. 37 and 38 seek documents that support any contention by Applicant that Opposer's mark RHYTHM is not a strong mark for clothing, or that RHYTHM is a weak mark for clothing, or that the mark is entitled to only limited protection. In response, Applicant poses essentially the same bogus, boilerplate objections as it did with regard to Request 36. These two requests clearly seek documents relevant to one of the few disputed issues in this proceeding – the strength of Opposer's RHYTHM mark– and Applicant should be ordered to respond properly to this request and to produce the requested documents.

IV. Applicant's Objection to Opposer's Second Set of Interrogatories

Opposer Rhythm's second set of interrogatories (Exhibit 3) consists of a single Interrogatory, No. 19, asking that Applicant state the facts that support or substantiate each denial or partial denial of Opposer's Admission Requests. Applicant's response (Exhibit 10) consists of an objection that the total number of interrogatories served by Opposer exceed the 75-interrogatory limit.

Applicant's explanation for its counting of interrogatories makes no sense. First, Opposer's First Set of Interrogatories¹⁰ contained only 18 interrogatories. As to Interrogatory 19, it does not call for "at least" 60 answers. Applicant has expressly "denied" only seven admission requests (Nos. 15 and 24-29). In response to nearly every other admission request (including those involved in this motion to compel), Applicant "denied" the request as a pro forma afterthought to its objection to the request. Applicant so admitted in its email of January 7, 2016 (See footnote 8, above). Thus the interrogatories in question, even under a liberal count, total not more than 25 at this point.

Once again, Applicant has posed a bogus objection in order to avoid proper discovery. Opposer requests that Applicant be ordered to respond fully and properly to this interrogatory.

V. Applicant's Responses to Opposer's Request for the Production of Documents and Things (First Set)

Opposer Rhythm seeks proper and complete responses to, and production of documents under, production requests Nos. 10, 11, 16, 21, 25, and 26-30. (See Exhibit 1).

¹⁰ See Exhibit 11, OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT.

Applicant's Responses to Opposer's Requests for the Production of Documents and Things is attached as Exhibit 12 hereto.

With regard to Production Requests 10 and 11, Applicant indicated that it "will produce" documents concerning selection and adoption of applicant's mark. Applicant also stated that it "will produce" documents in response to Requests 16 (marketing documents) and 21 (geographical documents). To the extent that Applicant has not produced those documents, Applicant should be ordered to do so.

With regard to Production Request 23 (authorization, license, franchise, assignment, or grant from Applicant), Applicant stated that it was still investigating. Applicant should be ordered to provide the documents responsive to this request immediately.

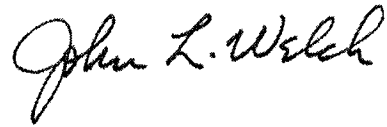
With regard to Production Request 25 (design plans and/or artwork), Applicant stated that it "will produce" the requested documents. Applicant should be ordered to produce those documents immediately, if it has not already done so.

With regard to Production Requests 26-30, Applicant stated that it "will produce or refer Opposer to any nonprivileged documents responsive to this request." Opposer requests that Applicant be ordered to either produce the requested documents or point out what documents already produced are responsive to these requests.

VI. CONCLUSION

For the foregoing reasons, Opposer Rhythm requests that the Board order Applicant J&N Sales to respond promptly and fully to the discovery requests discussed above, and to produce the documents requests therein.

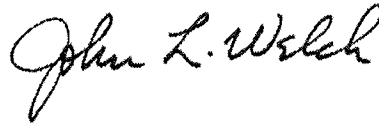
RHYTHM HOLDING LIMITED



John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
617-646-8000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Applicant this 29th day of January, 2016, by mailing a copy thereof via first-class mail, postage pre-paid, to James A. Power, Jr., Esq., Power Del Valle LLP, 233 West 72nd Street, New York, NY 10023.



John L. Welch

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Rhythm Holding Limited,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91217589
)	
J & N Sales, LLC,	)	Serial No. 86050581
)	
Applicant.)	

OPPOSER'S REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rule 34, Fed. R. Civ. P., Opposer Rhythm Holding Limited requests that the Applicant J & N Sales, LLC produce for inspection and copying each of the following documents and things. Said production shall take place at the office of the undersigned, or at some other mutually-convenient location, at 9:30 A.M. on the thirty-fifth day following service hereof.

DEFINITIONS

1. The term "Applicant" as used herein denotes J & N Sales, LLC.
2. The term "person" or "persons" as used in these interrogatories includes, without limitation, any individual or association, partnership, corporation, firm, or organization.

REQUESTS

1. Representative specimens of all advertising documents and promotional materials, including, circulars, leaflets, signs, direct mail pieces, newspaper and magazine advertisements, telephone book listings, website pages, Twitter pages, Facebook pages, press releases, and any other materials ever used or disseminated by Applicant in connection with the promotion or marketing of its goods, and bearing the mark depicted in Application Serial No. 86050581.

2. Documents concerning the annual sales in units and dollars for each of the goods identified in Application Serial No. 86050581 and sold under the mark depicted therein.

3. Documents concerning Applicant's annual expenditures for advertising and promotion of the goods identified in Application Serial No. 86050581 under the mark depicted therein.

4. Documents concerning the classes of customers for Applicant's goods identified in Application Serial No. 86050581 sold under the mark depicted therein.

5. Documents concerning the media channels by which Applicant promotes or markets, or intends to promote or market, the goods identified in Application Serial No. 86050581 under the mark depicted therein.

6. Documents concerning Applicant's first knowledge of Opposer's use of the mark for clothing.

7. Documents concerning Applicant's first knowledge of Opposer's use of the mark RHYTHM for backpacks or day packs.

8. Documents concerning each report, study, survey, investigation, or analysis conducted by or on behalf of Applicant and relating to Opposer or its mark RHYTHM.

9. Documents concerning each report, study, survey, investigation, or analysis conducted by or on behalf of Applicant and relating to the likelihood of confusion between Opposer's mark RHYTHM and the mark depicted in Application Serial No. 86050581.

10. Documents concerning Applicant's selection of the mark depicted in Application Serial No. 86050581.

11. Documents concerning Applicant's adoption of the mark depicted in Application Serial No. 86050581 for the goods identified therein.

12. Documents concerning Applicant's first use of the mark depicted in Application Serial No. 86050581 for each of the goods identified therein.

13. Documents concerning Applicant's continuous use of the mark depicted in Application Serial No. 86050581 for each of the goods identified therein, since the date of first use.

14. Documents and things concerning Applicant's business reputation and/or the reputation of its goods identified in Application Serial No. 86050581 and sold under the mark depicted therein.

15. Documents concerning each trademark search, service mark search or investigation conducted by or for Applicant, concerning the mark depicted in Application Serial No. 86050581, or any variation of that mark.

16. All memoranda, reports, studies, market plans, or the like, relating to the marketing or potential marketing of the goods identified in Serial No. 86050581 under the mark depicted therein.

17. Market studies, surveys, opinion polls, or other samplings of attitudes relating to the mark depicted in Application Serial No. 86050581.

18. Market studies, surveys, opinion polls, or other samplings of attitudes relating to Opposer's mark RHYTHM.

19. Documents concerning any incident of actual confusion on the part of any person, between Opposer's mark RHYTHM and the mark depicted in Application Serial No. 86050581.

20. Documents concerning any incident in which a person expressed, implied, or suggested any uncertainty, confusion, or mistake about the source, sponsorship, or affiliation of the goods offered by Applicant under the mark depicted in Application Serial No. 86050581.

21. Documents concerning the geographic area in which Applicant has used, or intends to use, the mark depicted in Application Serial No. 86050581 for the goods identified therein.

22. Documents concerning any plans of Applicant to expand its use of the mark depicted in Application Serial No. 86050581, including, but not limited to, expansion as to the type of goods sold, consumer base, or geographical market area.

23. Documents comprising or reflecting any authorization, license, franchise, assignment, or grant from Applicant to any other person or entity, giving the other person or entity the right to use the mark depicted in Application Serial No. 86050581, or to market products or services under that mark.

24. Documents concerning any litigation or other legal proceeding involving Applicant's mark depicted in Application Serial No. 86050581.

25. Documents concerning any design plans and/or artwork relating to the Applicant's mark depicted in Application Serial No. 86050581.

26. Documents concerning any symbolism, connotation(s) and/or linguistic significance relating to the Applicant's mark depicted in Application Serial No. 86050581.

27. Photographs or samples of each of the goods identified in Application Serial No. 86050581 and sold or distributed under the mark depicted therein.

28. Documents identifying each website at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods identified therein.

29. Documents identifying each website at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods and/or services of others.

30. Documents identifying each of the media, including social media (and social media websites), at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods identified therein.

31. Documents identifying each of the media, including social media (and social media websites), at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods and/or services of others.

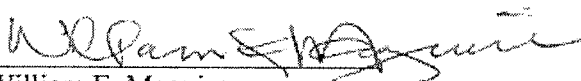
32. Documents identifying each of the trade shows at which Applicant has displayed the mark depicted in Application Serial No. 85955722.

33. Documents identifying each of the trade shows at which the mark depicted in Application Serial No. 85955722 has been displayed in connection with the goods and/or services of others.

34. Referring to Interrogatory No. 18 in the Opposer's First Set of Interrogatories in this matter, documents that support applicant's contention that the applied-for-mark is a couple entendre or has more than one meaning.

35. The documents identified in Applicant's response to Opposer's First Set of Interrogatories to Applicant.

RHYTHM HOLDING LIMITED


William F. Maguire
LAW OFFICES OF WILLIAM E. MAGUIRE
520 Broadway, Suite 350
Santa Monica, CA 90401
Phone 310.470.2929

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon Applicant this 11th day of November, 2014, by mailing a copy via First Class Mail, postage pre-paid, to their counsel at the following address:

JAMES A. POWER
POWER DEL VALLE LLP
233 72ND ST
NEW YORK, NY 10023-2788


William E. Maguire

EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	
Rhythm Holding Limited,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91217589
)	
J & N Sales, LLC,	)	Serial No. 86050581
)	
Applicant.)	
_____)	

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT

Pursuant to Rule 36, Fed. R. Civ. P., Opposer Rhythm Holding Limited requests that the Applicant, J & N Sales, LLC, admit the following statements:

DEFINITIONS

1. The term "Applicant" as used herein denotes J & N Sales, LLC.
2. The term "person" or "persons" as used in these interrogatories includes, without limitation, any individual or association, partnership, corporation, firm, or organization.

REQUESTS FOR ADMISSION

1. Admit that Applicant has used the mark, RHYTHM, on clothing.
2. Admit that Applicant has used the mark, RHYTHM, on hats.
3. Admit that the goods identified in Registration No. 3,610,417 are not limited to any particular class of customers.

4. Admit that the goods identified in Registration No. 3,610,417 are not limited to any particular price or range of prices.
5. Admit that the goods identified in Registration No. 3,610,417 are not limited to any particular channels of trade.
6. Admit that the goods identified in Registration No. 3,610,417 are not limited to any particular channels of advertising or promotion.
7. Admit that the goods identified in Registration No. 3,884,199 are not limited to any particular class of customers.
8. Admit that the goods identified in Registration No. 3,884,199 are not limited to any particular price or range of prices.
9. Admit that the goods identified in Registration No. 3,884,199 are not limited to any particular channels of trade.
10. Admit that the goods identified in Registration No. 3,884,199 are not limited to any particular channels of advertising or promotion.
11. Admit that the goods identified in Registration No. 3,890,579 are not limited to any particular class of customers.
12. Admit that the goods identified in Registration No. 3,890,579 are not limited to any particular price or range of prices.
13. Admit that the goods identified in Registration No. 3,890,579 are not limited to any particular channels of trade.
14. Admit that the goods identified in Registration No. 3,890,579 are not limited to any particular channels of advertising or promotion.
15. Admit that Opposer's registered mark RHYTHM is a strong mark for clothing.
16. Admit that the goods identified in Application Serial No. 86050581 include relatively inexpensive items purchased with no more than ordinary care.
17. Admit that the goods identified in Application Serial No. 86050581 include items purchased on impulse without a great amount of deliberation.
18. Admit that Applicant sells some of the goods identified in Application Serial No. 86050581, in the color blue.

19. Admit that Applicant sells some of the goods identified in Application Serial No. 86050581, in various shades of blue.
20. Admit that Applicant sells jeans under the mark RHYTHM IN BLUES, in the color blue.
21. Admit that Applicant sells jeans under the mark RHYTHM IN BLUES, in various shades of blue.
22. Admit that Applicant sells pants under the mark RHYTHM IN BLUES, in the color blue.
23. Admit that Applicant sells pants under the mark RHYTHM IN BLUES, in various shades of blue.
24. Admit that use of the mark RHYTHM IN BLUES by Applicant for shirts is likely to cause confusion with Opposer's mark RHYTHM, registered for shirts.
25. Admit that use of the mark RHYTHM IN BLUES by Applicant for T-shirts is likely to cause confusion with Opposer's mark RHYTHM, registered for t-shirts.
26. Admit that use of the mark RHYTHM IN BLUES by Applicant for hats is likely to cause confusion with Opposer's mark RHYTHM, registered for hats.
27. Admit that use of the mark RHYTHM IN BLUES by Applicant for shorts is likely to cause confusion with Opposer's mark RHYTHM, registered for shorts.
28. Admit that use of the mark RHYTHM IN BLUES by Applicant for pants is likely to cause confusion with Opposer's mark RHYTHM, registered for pants.
29. Admit that use of the mark RHYTHM IN BLUES by Applicant for sweat shirts is likely to cause confusion with Opposer's mark RHYTHM, registered for sweatshirts.
30. Admit that Opposer has standing to bring the notice of opposition filed herein.
31. Admit that, in this proceeding, Opposer has priority of use for the goods identified in its pleaded registrations.
32. Admit that Applicant used the mark RHYTHM IN BLUES for the goods identified in Application Serial No. 86050581, no earlier than August 28, 2013.
33. Admit that some of the goods identified in Application Serial No. 86050581 are identical to some of the goods identified in Opposer's Registration No. 3,610,417.
34. Admit that the goods identified in Application Serial No. 86050581 are related to goods identified in Opposer's Registration No. 3,610,417.
35. Admit that some of the goods identified in Application Serial No. 86050581 are identical to

some of the goods identified in Opposer's Registration No. 3,884,199.

36. Admit that the goods identified in Application Serial No. 86050581 are related to goods identified in Opposer's Registration No. 3,884,199.

37. Admit that Applicant did not conduct a trademark search prior to adopting the mark RHYTHM IN BLUES.

38. Admit that Applicant was aware of Opposer's mark RHYTHM at the time Applicant adopted the mark RHYTHM IN BLUES.

39. Admit that Applicant was aware of Opposer's mark RHYTHM at the time Applicant filed Application Serial No. 86050581 for the mark RHYTHM IN BLUES.

40. Admit that Applicant has, in its advertising and/or promotional material, displayed the word RHYTHM more prominently than the other parts of the mark RHYTHM IN BLUES.

41. Admit that Applicant has, in its advertising and/or promotional material, displayed the word RHYTHM with other words, but without the words or term "IN BLUES" immediately following the word RHYTHM.

42. Admit that consumers of clothing items are accustomed to seeing shirts, t-shirts, hats, shorts, pants and sweatshirts offered for sale under the same mark owned by a single entity.

43. Admit that consumers of clothing items are accustomed to seeing shirts, t-shirts, hats, shorts, pants and sweatshirts sold in the same retail store.

44. Admit that consumers of clothing items are accustomed to seeing shirts, t-shirts, hats, shorts, pants and sweatshirts sold in the same online retail store.

45. Admit that each of the documents produced by Applicant on December 31, 2014, in response to Opposer's Request for the Production of Documents and Things, is a true, correct, and authentic copy.

46. Admit that in a document distributed by Applicant, it stated "We offer the best fit, Premium denim, Innovated washes with rich indigo hues."

47. Admit that in a document distributed by Applicant, it stated "Define yourself and find the rhythm in your step with effortless style."

48. Admit that in advertising and promotional material, Applicant has used the slogan or phrase "Find the Rhythm in your step."

49. Admit that in advertising and promotional material, Applicant has used the slogan or phrase "Find the Rhythm in your step," in connection with jeans.

50. Admit that in advertising and promotional material, Applicant has used the slogan or phrase "Find the Rhythm in your step," in connection with jeans offered in the color blue.

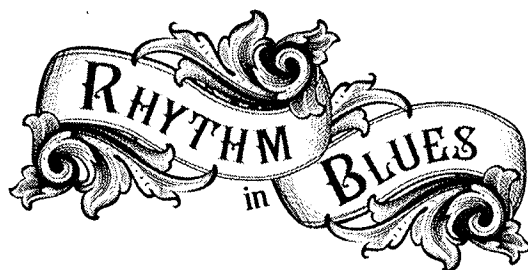
51. Admit that in advertising and promotional material, Applicant has used the slogan or phrase "Find the Rhythm in your step," in connection with pants.

52. Admit that in advertising and promotional material, Applicant has used the slogan or phrase "Find the Rhythm in your step," in connection with pants offered in the color blue.

53. Admit that in advertising and promotional material, Applicant has used the slogan or phrase "Find the Rhythm in your step," in connection with denim pants.

54. Admit that in advertising and promotional material, Applicant has used the slogan or phrase "Find the Rhythm in your step," in connection with denim pants offered in the color blue.

55. Admit that Applicant has used the mark of Application Serial No. 86050581 in the form and color (blue) shown immediately below:



56. In the mark RHYTHM IN BLUES, the word "blues" refers to the colors of the jeans sold by Applicant under the mark.

57. In the mark RHYTHM IN BLUES, the word "blues" refers to the colors of the pants sold by Applicant under the mark.

58. In the mark RHYTHM IN BLUES, the word "blues" refers to the colors of the denim pants sold by Applicant under the mark.

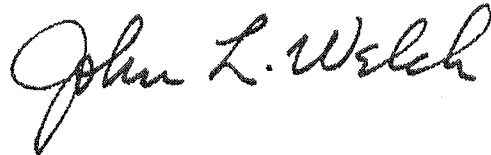
59. Consumers familiar with Opposer's mark RHYTHM mark for clothing items are likely to believe that the applied-for mark RHYTHM IN BLUES is a variation of Opposer's mark.

60. Consumers familiar with Opposer's mark RHYTHM mark for clothing items are likely to believe that the products sold by Applicant under the applied-for mark RHYTHM IN BLUES are part of Opposer's clothing line offered in various shades of blue.

61. Opposer is the owner of U.S. Registration No. 3,610,417.

62. Registration No. 3,610,417 is valid and subsisting.
63. Opposer is the owner of U.S. Regsitratio No. 3,884,199.
64. Registration No. 3,884,199 is valid and subsisting.
65. Opposer is the owner of U.S. Regsitratio No. 3,890,579.
66. Registration No. 3,890,579 is valid and subsisting.

Rhythm Holding Limited,

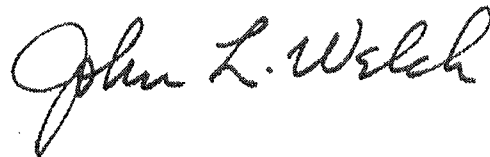
A handwritten signature in black ink that reads "John L. Welch". The signature is written in a cursive style with a large, stylized "J" and "W".

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
617/646-8000

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon Applicant this 28th day of September, 2015, by mailing a copy via First Class Mail, postage pre-paid, to their counsel at the following address:

JAMES A. POWER
POWER DEL VALLE LLP
233 72ND ST
NEW YORK, NY 10023-2788

A handwritten signature in black ink that reads "John L. Welch". The signature is written in a cursive style with a large, looping "J" and "W".

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210

EXHIBIT 3

)	
Rhythm Holding Limited,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91217589
)	
)	Serial No. 86050581
J & N Sales, LLC,)	
)	
Applicant.)	
)	

Pursuant to Rule 33, Fed. R. Civ. P., Opposer Rhythm Holding directs the following interrogatory to Applicant J & N Sales, LLC produce for inspection and copying each of the following documents and things.

19. With regard to Opposer's First Set of Requests for Admissions to Applicant, as to each Request that is denied in whole or in part by Applicant, state the facts that support or substantiate the denial or partial denial.

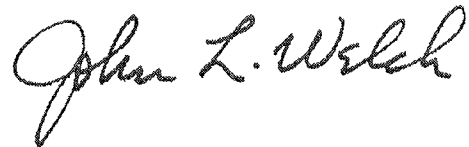
John L. Welch

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
617-646-8000

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon Applicant this 28th day of September, 2015, by mailing a copy via First Class Mail, postage pre-paid, to their counsel at the following address:

JAMES A. POWER
POWER DEL VALLE LLP
233 72ND ST
NEW YORK, NY 10023-2788

A handwritten signature in black ink that reads "John L. Welch". The signature is written in a cursive style with a large, stylized "J" and "W".

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210

EXHIBIT 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Rhythm Holding Limited,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91217589
)	
J & N Sales, LLC,	)	Serial No. 86050581
)	
Applicant.)	
)	

OPPOSER'S SECOND SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rule 34, Fed. R. Civ. P., Opposer Rhythm Holding Limited requests that the Applicant J & N Sales, LLC produce for inspection and copying each of the following documents and things. Said production shall take place at the office of the undersigned, or at some other mutually-convenient location, at 9:30 A.M. on the thirty-fifth day following service hereof.

DEFINITIONS

1. The term "Applicant" as used herein denotes J & N Sales, LLC.
2. The term "person" or "persons" as used in these interrogatories includes, without limitation, any individual or association, partnership, corporation, firm, or organization.

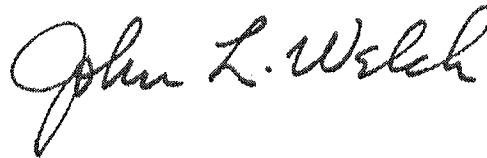
REQUESTS

36. With regard to Opposer's First Set of Requests for Admissions to Applicant, as to each Request that is denied in whole or in part by Applicant, the documents supporting or substantiating each denial or partial denial.

37. Documents supporting or substantiating any contention by Applicant that Opposer's mark RHYTHM is not a strong mark for clothing.

38. Documents supporting or substantiating any contention by Applicant that Opposer's mark RHYTHM is a weak mark for clothing, or is entitled to only limited protection.

RHYTHM HOLDING LIMITED

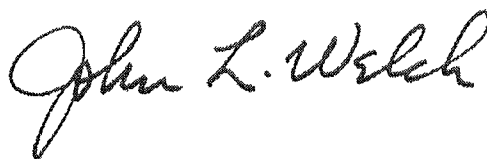
A handwritten signature in black ink that reads "John L. Welch". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
617-646-8000

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon Applicant this 28th day of September, 2015, by mailing a copy via First Class Mail, postage pre-paid, to their counsel at the following address:

JAMES A. POWER
POWER DEL VALLE LLP
233 72ND ST
NEW YORK, NY 10023-2788

A handwritten signature in black ink that reads "John L. Welch". The signature is written in a cursive style with a large, stylized "J" and "W".

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210

EXHIBIT 5

John L. Welch
Counsel
john.welch@wolfgreenfield.com
direct dial 617.646.8285

January 14, 2016

***VIA FIRST CLASS MAIL
& EMAIL***

James A. Power, Jr.
Power Del Valle LLP
233 West 72nd Street
New York, NY 10023

Re: Rhythm Holding Limited v. J&N Sales, LLC
Opposition No. 91217589
Our Ref. No. R2051.50002US00

Dear Mr. Power:

This will confirm my four emails over the past several days, requesting that we schedule a telephone conference to discuss outstanding discovery issues for both parties, including those discussed in your recently filed and premature motion to compel. We have suggested the afternoon of Thursday, January 21st, beginning at 2pm. You have not responded regarding that suggested date and time.

With regard to applicant discovery responses, we plan to discuss the following responses of Applicant:

Applicant's Responses to Opposer's Admission Requests

Referring to Applicant's responses to Opposer's admission requests, Opposer requests that Applicant re-consider its objections to the following Requests for Admissions so that we may review them during our discussion: Nos. 3-14, 16-23, 33-36, 37-38, 40, 42-44, 46-54, 56-60, 62, 64, and 66. Your client's responses to these admission requests fall into three categories:

(1) objections that assert that the request "does not seek admission of facts, the application of law to fact, or opinions about either "(Requests 3-14, 16-17, 42-44, 62, 64, and 66);

James A. Power, Jr.
January 14, 2016
Page 2

(2) objections that assert that the request seeks information that is “not material to this proceeding and is not calculated to lead to the discovery of admissible evidence” (Requests 18-23, 37-38, and 46-54); and

(3) objections that assert that the request is “vague and indefinite, not calculated to lead to the discovery of admissible evidence, and does not seek admission of facts, the application of law to fact, or opinions about either” (Requests 33-36, 40, and 56-60).

With regard to category 1, requests 3-14 seek the admission of facts, and are therefore proper under Rule 36 FRCP. Requests 16-17, 42-44, and 62, 64, and 66 seek the admission of facts or opinions about facts, again proper under Rule 36. Please re-consider and withdraw your objections to these requests and provide proper responses.

With regard to category 2, Requests 18-23 seek relevant information regarding applicant’s goods because they are directed to whether the word “blue” in applicant’s mark is merely descriptive of the identified goods. Requests 37-38 are relevant to applicant’s intent in adopting the opposed mark. Requests 46-54 are relevant to establishing the meaning or connotation of applicant’s mark. Please re-consider and withdraw your objections to these requests and provide proper responses.

With regard to category 3, Requests 33-36 are quite straightforward and we therefore fail to understand your vagueness objection. These requests seek admissions of facts about the overlap in goods between the pleaded registrations and the opposed application. Request 40 is likewise straightforward, and seeks admissions of fact that are relevant to establishing that applicant’s standard character mark may be used in a form that increases the likelihood of confusion with opposer’s marks. Requests 56-60 are also straightforward, and seek admissions as to facts or opinions about facts that are relevant to the descriptiveness of the word “blues” in applicant’s mark and relevant to the issue of likelihood of confusion. Please re-consider and withdraw your objections to these requests and provide proper responses.

Applicant’s Objection to Opposer’s Second Set of Interrogatories

With regard to your objection as to the number of interrogatories, please explain how you have counted the interrogatories, noting that this set of interrogatories is directed only to the admission requests that applicant has denied in whole or in part.

Applicant’s Responses to Opposer’s Second Set of Requests for the Production of Documents and Things

Your responses to production requests nos. 36-38 amount to little more than gibberish. These requests seek documents that are plainly relevant to the issue in this proceeding. Please

James A. Power, Jr.
January 14, 2016
Page 3

point out the production documents that are responsive to each request, indicating which particular documents were produced by applicant and which are publicly available. Your statement that some responsive documents “shall be produced by applicant pursuant to pretrial disclosure schedule and rules” is wholly improper, since opposer is entitled to receive these documents now, as part of discovery.

Applicant’s Responses to Opposer’s Interrogatories (First Set)

Your client objected to Opposer’s interrogatory no. 2 (seeking sales information) and 10 (seeking advertising expenditures) on the ground of relevance. Sales figures and advertising expenditures are relevant to the issue of actual confusion, since low sales figures and low advertising expenditures may show that there has not been a reasonable opportunity for confusion to occur. The fact that the opposed application was filed under Section 1(b) does not preclude discovery regarding actual use of the opposed mark, including discovery as to sales figures and advertising expenditures. Please provide the requested information immediately.

Applicant’s Responses to Opposer’s Request for the
Production of Documents and Things (First Set)

In your responses to these production requests, you objected to production of documents concerning sales figures (request no. 2) and advertising expenditures (request no. 3) on the ground of relevance. As discussed above, sales and advertising information is indeed relevant, despite the fact that the opposed application was filed under Section 1(b). Please provide these documents immediately.

With regard to Requests 10 and 11, you indicated that applicant “will produce” documents concerning selection and adoption of applicant’s mark.. Applicant also stated that it “will produce” documents in response to Requests 16 (marketing documents) and 21 (geographical documents). Please provide these documents immediately.

With regard to production request 23 (authorization, license, franchise, assignment, or grant from Applicant), Applicant stated that it was still investigating. Please provide the documents responsive to this request immediately.

With regard to production request 25 (design plans and/or artwork), Applicant stated that it “will produce” those documents. Please provide them immediately.

With regard to production requests 26-30, Applicant stated that it “will produce or refer Opposer to any nonprivileged documents responsive to this request.” Please produce the

James A. Power, Jr.
January 14, 2016
Page 4

requested documents or point out what documents already produced are responsive to these requests.

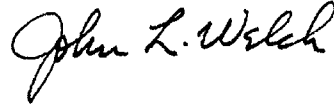
* * * * *

Finally, you indicated that you would like to discuss settlement of the case. Opposer is willing to discuss settlement at the telephone conference. It is reviewing your client's last proposal and will provide a counter-proposal soon.

We look forward to your confirmation of the time and date for our telephone discussion.

Very truly yours,

WOLF, GREENFIELD & SACKS, P.C.



John L. Welch

JLW/jw/smo
cc: William E. Maguire, Esq.

Welch, John L.

From: Welch, John L.
Sent: Thursday, January 14, 2016 10:07 AM
To: James A.Power Jr
Cc: Will Maguire
Subject: RE: Rhythm v. J&N Sales
Attachments: Letter to James Power, Jr..pdf

Dear Mr. Power:

Please see the attached letter.

We look forward to your response regarding a time and date for the telephone conference.

Very truly yours,

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
direct: 617-646-8285

EXHIBIT 6

POWER DEL VALLE LLP
COUNSELLORS AT LAW
233 WEST 72 STREET
NEW YORK, NEW YORK 10023

JAMES A. POWER JR. ◦
MARGUERITE DEL VALLE
◦ also admitted California

TELEPHONE 212-877-0100
FACSIMILE 212-580-0325
jp@powerdel.com

January 25, 2016

0256.612

john.welch@wolfgreenfield.com

John L. Welch, Esq.
Wolf Greenfield & Sacks. P.C.
600 Atlantic Ave.
Boston, MA 02210-2211

Re: RHYTHM IN BLUES - Opposition 91-217589

Dear Mr. Welch:

I write in response to your January 14, 2016 letter regarding applicant's objections to opposer's September 28, 2015 discovery.

Opposer's Admission Requests

The sixty-six (66) admission requests served by opposer, in vast number and substance, as well as its interrogatories seeking an explanation of each that is denied, are unduly burdensome in view of the limited scope of this proceeding upon which you have often relied. They are overlapping, repetitive, unnecessary to opposer's case, and otherwise objectionable as set out in applicant's response and below.

Absence of Factual Foundation

Requests 3-14 cannot be answered because goods of the type listed in those registrations may or may not be sold to particular classes of customers or in particular channels of trade, depending upon the circumstances under which those unidentified sales may have been made. Those requests therefore require applicant to hypothesize as to a response and are improper matters for admission under FED.R.CIV.P. 36. The same applies to the expense, impulse, care and deliberation regarding actual goods and circumstances not identified in requests 16-17.

Requests 42-44 are also hypothetical insofar as no actual consumers, clothing items or relevant circumstances are identified so any admission or denial thereof would be meaningless, though it is understood that opposer would attempt to unfairly attribute meaning to them in this proceeding.

Requests 62, 64 and 66 ask whether opposer's registrations are "valid and subsisting," terms which applicant does not deem to be legal characterizations of trademark registrations. In any event, applicant would deny these requests independent of its objections.

Immaterial and Not Calculated to Lead the Discovery of Admissible Evidence

Requests 18-23, regarding what goods applicant may or may not actually sell, do not seek the admission of matters material to this action as, you have recognized yourself, this proceeding is limited in scope to applicant's listing of goods, regardless of what is actually sold, its color, or how it is sold, including any contention as to descriptiveness.

Requests 37 and 38 may turn on the intended meaning of "adopting" the mark and, thus, are unduly vague even were applicant to waive the objection to which you refer. While "adopting" a mark can readily be understood in the broader context of an interrogatory or document request, when only information is sought, it poses a problem in the context of an admission request when the fact to be admitted is not clear. Applicant conducted a trademark search prior to deciding to use and using its mark RHYTHM IN BLUES in commerce. A copy of that search has been produced. Applicant was not aware of opposer's RHYTHM mark prior to conducting that search.

Please point us to the documents or other sources of the statements to which opposer refers in requests 46-54.

Vague & Indefinite, Not Calculated, No Factual Foundation

Requests 33-36 cannot be answered because goods of the type listed in those registrations and applications may or may not be identical or related, depending upon the nature of those unspecified goods. Those requests therefore require applicant to hypothesize as to a response and are improper matters for admission under FED.R.CIV.P. 36. Insofar as those requests may refer to goods applicant may actually sell, they do not seek the admission of matters material to this action as this proceeding is limited in scope to applicant's listing of goods.

The words "more prominently" render request no. 40 vague and indefinite. The request does not seek the admission of matters material to this action as this proceeding is limited in scope to applicant's listing of goods.

Requests no. 56-58 and 60, regarding the nature goods that may or may not actually sold by applicant, do not seek the admission of matters material to this action as this proceeding is limited in scope to applicant's listing of goods. In any event, applicant would deny these requests independent of its objections.

Requests no. 59 and 60 cannot be answered because they require applicant to hypothesize as to customers "familiar" with opposer's mark and what such unidentified customers might believe as to unidentified goods. The request does not seek the admission of matters material to this action as this proceeding is limited in scope to applicant's listing of goods. In any event, applicant would deny those requests independent of its objections.

Opposer's Second Set of Interrogatories


Opposer's first set of interrogatories were comprised of at least 60 subparts (nos. 2 and 7, twenty subparts each; nos. 2, 8 and 9, two subparts each). Opposer's second set of interrogatories are comprised of at least sixty-three subparts, one corresponding to each admission request denied in whole or in part. Those 123 interrogatories exceed the limit by 48.

Opposer's Second Set of Document Requests

You will need to be responsibly more precise and objective in identifying opposer's issues with applicant's responses to these requests. Those requests and applicant's responses are governed by FED.R.CIV.P 34; they are not interrogatories. Applicant's documents were produced, organized in folders as they are kept in the ordinary course of business. Documents supporting the matters identified in opposer's requests no. 36-38 include public documents in the records of the Trademark Office, documents produced in this proceeding as well as documents yet to be produced by opposer in response to applicant's outstanding requests. Your attention is directed to opposer's objections to applicant's document requests no. 25 and 26; opposer's requests do not seek disclosure of information but, rather, a specification of which documents applicant attends to rely at trial, which is governed by trademark rules and the schedule in this proceeding.

Please let me know if this satisfies your concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "James A. Power Jr.", with a stylized flourish at the end.

James A. Power Jr

c: William E. Maguire, Esq.

EXHIBIT 7

Welch, John L.

From: Welch, John L.
Sent: Tuesday, January 26, 2016 9:02 AM
To: 'James A.Power Jr'
Cc: Will Maguire (paliesq@gmail.com)
Subject: RE: Rhythm in Blues

Dear Mr. Power:

We would like to discuss the issues raised in your letter by telephone.

Are you available tomorrow or Thursday?

As previously indicated we plan to file a motion to compel, unless we can resolve these disputes by Friday.

Regards,

JLW

John L. Welch
Counsel

jwelch@wolfgreenfield.com
direct dial: 617.646.8285



Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue | Boston, MA 02210-2206
617.646.8000 | 617.646.8646 fax

Please consider the environment before printing this email.

For more information about Wolf Greenfield, please visit us at www.wolfgreenfield.com

This e-mail message and any attachments may contain confidential or privileged information. If you are not the intended recipient, please notify me immediately by replying to this message and destroy all copies of this message and any attachments. Thank you.

From: James A.Power Jr [<mailto:jp@powerdel.com>]
Sent: Monday, January 25, 2016 6:03 PM
To: Welch, John L.
Cc: maguire@artnet.net
Subject: Rhythm in Blues

Please see attached letter.

James A. Power Jr
Power Del Valle LLP
233 West 72 Street
New York, New York 10023
212-877-0100
fax 212-580-0325
jp@powerdel.com
<http://www.powerdel.com>

Confidential and privileged. This communication is intended only for the addressee(s) identified above. If you are not an intended recipient of this communication, you are hereby notified that you must not use, disseminate or copy it in any form or take any action in reliance on it. If you have received this communication in error, please delete it and all copies from your e-mail server and immediately notify the sender, Power Del Valle LLP, at an address shown above. This communication may contain confidential, proprietary or legally privileged information that binds the recipient to nondisclosure. Neither confidentiality nor any privilege is intended to be waived or lost by any error in transmission. *Nothing communicated in response to an unsolicited e-mail or in the absence of a formal, written engagement may be relied upon as legal advice nor as establishing an attorney-client relationship*

EXHIBIT 8

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

RHYTHM HOLDING LIMITED,)	
	)	Opposition No. 91-217589
Opposer,)	
	)	In the Matter of:
v.)	
	)	Application No. 86/050,581
J & N SALES, LLC,)	
	)	Mark: RHYTHM IN BLUES
Applicant.)	
)	

APPLICANT'S RESPONSES TO OPPOSER'S REQUESTS FOR ADMISSIONS

Applicant J & N Sales LLC hereby responds, pursuant to 37 CFR § 2.120(a) and FED.R.CIV.P. 36, to opposer's requests for admissions served September 28, 2015.

General Objections

Applicant objects to opposer's requests insofar as they seek information subject to the attorney-client privilege, attorney work product or other privilege or exemption from discovery.

Applicant objects to opposer's requests insofar as they are vague, indefinite, overly broad, unduly burdensome, do not seek the admission of facts, the application of law to fact, or opinions about either, or the genuineness of any described documents, seek information that is irrelevant or immaterial to this proceeding, including applicant's sales, marketing or use in commerce, or available through other means, or are otherwise not calculated to lead to the discovery of admissible evidence.

Applicant objects to opposer's requests insofar as they seek information which is confidential or proprietary in nature, or would reveal sensitive business data, trade secrets or other proprietary or confidential information of plaintiffs, subject to application of the Board's standard protective order or a suitable stipulated protective order.

Applicant reserves the right to supplement and/or amend these responses as information becomes known and available.

Specific Responses

- ~~1. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.~~
- ~~2. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.~~
3. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
4. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
5. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
6. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
7. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
8. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
9. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
10. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.
11. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

12. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

13. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

14. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

~~15. Denied.~~

16. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

17. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

18. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

19. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

20. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

21. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

22. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

23. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Applicant admits that opposer has standing to bring this opposition based on opposer's limited use of its mark in commerce and otherwise denies this request.

31. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

32. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

33. Applicant objects to this request on the ground that it is vague and indefinite, not calculated to lead to the discovery of admissible evidence, and does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

34. Applicant objects to this request on the ground that it is vague and indefinite, not calculated to lead to the discovery of admissible evidence, and does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

35. Applicant objects to this request on the ground that it is vague and indefinite, not calculated to lead to the discovery of admissible evidence, and does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

36. Applicant objects to this request on the ground that it is vague and indefinite, not calculated to lead to the discovery of admissible evidence, and does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

37. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

38. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

~~39. Admitted.~~

40. Applicant objects to this request on the ground that it is vague and indefinite and seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

~~41. Applicant objects to this request on the ground that it is vague and indefinite and seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.~~

42. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

43. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

44. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

~~45. Admitted.~~

46. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

47. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

48. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

49. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

50. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

51. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

52. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

53. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

54. Applicant objects to this request on the ground that it seeks information that is not material to this proceeding and is not calculated to lead to the discovery of admissible evidence and denies the matter.

~~55. Admitted.~~

56. Applicant objects to this request on the ground that it is vague and indefinite, does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

57. Applicant objects to this request on the ground that it is vague and indefinite, does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

58. Applicant objects to this request on the ground that it is vague and indefinite, does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

59. Applicant objects to this request on the ground that it is vague and indefinite, does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

60. Applicant objects to this request on the ground that it is vague and indefinite, does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

~~61. Applicant is without sufficient knowledge to admit or deny this request and therefore denies it.~~

62. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

~~63. Applicant is without sufficient knowledge to admit or deny this request and therefore denies it.~~

64. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

~~65. Applicant is without sufficient knowledge to admit or deny this request and therefore denies it.~~

66. Applicant objects to this request on the ground that it does not seek admission of facts, the application of law to fact, or opinions about either and denies the matter.

New York, New York
November 9, 2015



James A. Power Jr
POWER DEL VALLE LLP
233 West 72nd Street
New York, New York 10023
212-877-0100
jp@powerdel.com
Attorneys for Applicant

Certificate of Service

I hereby certify that, on November 9, 2015, a copy of the foregoing response was served upon opposer's attorney of record by first class mail, postage prepaid, in an envelope addressed to:

John L. Welch, Esq.
Wolf Greenfield & Sacks, P.C.
600 Atlantic Ave.
Boston, MA 02210-2211



James A. Power Jr

EXHIBIT 9

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

RHYTHM HOLDING LIMITED,)	
	)	Opposition No. 91-217589
Opposer,)	
	)	In the Matter of:
v.)	
J & N SALES, LLC,	)	Application No. 86/050,581
)	
Applicant.	)	Mark: RHYTHM IN BLUES
)	

**APPLICANT'S RESPONSES TO OPPOSER'S SECOND SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Applicant J & N Sales LLC responds, pursuant to 37 CFR 2.120(a) and FED.R.CIV.P.
34(b)(2), to opposer's discovery requests served November 11, 2014.

General Objections

Applicant objects to opposer's requests insofar as they seek information subject to the attorney-client privilege, attorney work product or other privilege or exemption from discovery.

Applicant objects to opposer's requests insofar as they are vague, indefinite, overly broad, unduly burdensome, seek information that is irrelevant or immaterial to this proceeding, available through other means, or are otherwise not calculated to lead to the discovery of admissible evidence.

Applicant objects to opposer's requests insofar as they seek information which is confidential or proprietary in nature, or would reveal sensitive business data, trade secrets or other proprietary or confidential information of plaintiffs, subject to application of the Board's standardized protective order or a suitable stipulated protective order.

Applicant reserves the right to supplement and/or amend these responses as information becomes known and available.

Specific Responses

36. With respect to Opposer's First Set of Requests for Admissions to Applicant, as to each request that is denied in whole or in part by Applicant, the documents supporting or substantiating each denial or partial denial.

Response

Applicant objects to this request as vague and indefinite, objectionable on the same grounds on which applicant objected to the respective admission requests, overly broad and unduly burdensome insofar as it seeks documents supporting or substantiating a negative. Documents supporting or substantiating applicant's positions in this proceeding are of public record, have been produced by or sought from opposer, have been produced by applicant, or shall be produced by applicant pursuant to pretrial disclosure schedule and rules.

37. Documents supporting or substantiating any contention by Applicant that Opposer's mark RHYTHM is not a strong mark for clothing.

Response

Applicant objects to this request as vague, indefinite and unduly burdensome. Documents supporting or substantiating applicant's positions in this proceeding are of public record, have been produced by or sought from opposer or are in the possession of opposer, have been produced by applicant, or shall be produced by applicant pursuant to pretrial disclosure schedule and rules.

38. Documents supporting or substantiating any contention by Applicant that Opposer's mark RHYTHM is a weak mark for clothing, or is entitled to only limited protection.

Response

Applicant objects to this request as vague, indefinite and unduly burdensome. Documents supporting or substantiating applicant's positions in this proceeding are of public record, have been produced by or sought from opposer or are in the possession of opposer, have been produced by applicant, or shall be produced by applicant pursuant to pretrial disclosure schedule and rules.

New York, New York
November 9, 2015

James A. Power Jr
POWER DEL VALLE LLP
233 West 72nd Street
New York, New York 10023
212-877-0100
jp@powerdel.com
Attorneys for Applicant

Certificate of Service

I hereby certify that, on November 9, 2015, a copy of the foregoing responses was served upon opposer's attorney of record by first class mail, postage prepaid, in an envelope addressed to:

John L. Welch, Esq.
Wolf Greenfield & Sacks. P.C.
600 Atlantic Ave.
Boston, MA 02210-2211

James A. Power Jr

EXHIBIT 10

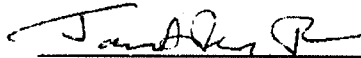
UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

RHYTHM HOLDING LIMITED,	)	Opposition No. 91-217589
)	
Opposer,)	
	)	In the Matter of:
v.)	
J & N SALES, LLC,	)	Application No. 86/050,581
)	
Applicant.	)	Mark: RHYTHM IN BLUES
)	

APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES

Applicant J & N Sales LLC hereby objects, pursuant to 37 CFR § 1.120(d), to opposer's second set of interrogatories served September 28, 2015, on the ground that they exceed in number, including subparts, the maximum permitted by the rule.

New York, New York
November 9, 2015



James A. Power Jr
POWER DEL VALLE LLP
233 West 72nd Street
New York, New York 10023
212-877-0100
jp@powerdel.com
Attorneys for Applicant

Certificate of Service

I hereby certify that, on November 9, 2015, a copy of the foregoing response was served upon opposer's attorney of record by first class mail, postage prepaid, in an envelope addressed to:

John L. Welch, Esq.
Wolf Greenfield & Sacks. P.C.
600 Atlantic Ave.
Boston, MA 02210-2211



James A. Power Jr

EXHIBIT 11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Rhythm Holding Limited,

Opposer,

v.

J & N Sales, LLC,

Applicant.

Opposition No. 91217589

Serial No. 86050581

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33, Fed. R. Civ. P., Opposer Rhythm Holding Limited directs the following interrogatories to the Applicant, J & N Sales, LLC.

DEFINITIONS

1. The term "Applicant" as used herein denotes J & N Sales, LLC.
2. The term "person" or "persons" as used in these interrogatories includes, without limitation, any individual or association, partnership, corporation, firm, or organization.

INTERROGATORIES

INTERROGATORY NO. 1

State the date when Applicant first used the mark depicted in Application Serial No. 86050581, in connection with each of the goods identified therein, and identify the documents comprising or concerning said first use.

INTERROGATORY NO. 2

State Applicant's annual sales in units and dollars for each of the identified goods in Application Serial No. 86050581.

INTERROGATORY NO. 3

State the geographic locations in which Applicant's goods identified in Application Serial No. 86050581 have been offered, or are intended to be offered, for sale.

INTERROGATORY NO. 4

Identify and describe the typical classes of consumers who have purchased, or are expected to purchase, Applicant's goods identified in Application Serial No. 86050581.

INTERROGATORY NO. 5

Identify and describe the channels of trade through which the goods identified in Application Serial No. 86050581 have reached, or are intended to reach, the ultimate consumer.

INTERROGATORY NO. 6

Identify and describe the media channels through which the goods identified in Application Serial No. 86050581 have been, or are intended to be, advertised and/or marketed.

INTERROGATORY NO. 7

State the approximate sale price for each of the goods identified in Application Serial No. 86050581.

INTERROGATORY NO. 8

Describe each instance in which Applicant has received any communication from any person which suggests that Opposer may be associated with Applicant, or which comprises an inquiry as to whether there is or may be any such association.

INTERROGATORY NO. 9

Describe each instance in which a person was mistaken as to the source of Applicant's goods, or of Opposer's goods, or made any inquiry regarding the source of those goods.

INTERROGATORY NO. 10

State Applicant's annual expenditures for advertising and promotion of the goods identified in Application Serial No. 86050581, and advertised or sold under the mark depicted therein.

INTERROGATORY NO. 11

Identify each website displaying the mark of Application Serial No. 86050581 and offering the Applicant's goods.

INTERROGATORY NO. 12

Identify each website displaying the mark of Application Serial No. 86050581 and offering the goods and/or services of others.

INTERROGATORY NO. 13

Identify each of the media, including social media (and social media websites), where Applicant displays the mark of Application Serial No. 86050581.

INTERROGATORY NO. 14

Identify each of the media, including social media (and social media websites), where Applicant displays the mark of Application Serial No. 86050581 and that offers the goods and/or services of others.

INTERROGATORY NO. 15

Identify the trade shows at which Applicant has displayed the mark of Application Serial No. 86050581 in connection with Applicant's goods.

INTERROGATORY NO. 16

Identify the trade shows at which Applicant has displayed the mark of Application Serial No. 86050581 in connection with the goods and/or services of others.

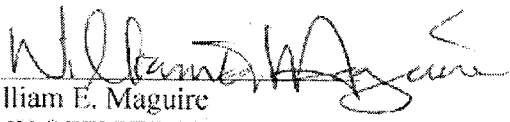
INTERROGATORY NO. 17

Identify each trademark or service mark search conducted by or for Applicant in connection with selection, adoption, and/or use of the mark depicted in Application Serial No. 86050581.

INTERROGATORY NO. 18

If applicant contends that the applied-for mark is a double entendre or has more than one meaning, state fully all meanings of the mark.

Rhythm Holding Limited,


William E. Maguire
LAW OFFICES OF WILLIAM E. MAGUIRE
520 Broadway, Suite 350
Santa Monica, CA 90401
Phone 310.470.2929

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon Applicant this 11th day of November, 2014, by mailing a copy via First Class Mail, postage pre-paid, to their counsel at the following address:

JAMES A. POWER
POWER DEL VALLE LLP
233 72ND ST
NEW YORK, NY 10023-2788


William E. Maguire

EXHIBIT 12

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

RHYTHM HOLDING LIMITED,)	
	)	Opposition No. 91-217589
Opposer,)	
	)	In the Matter of:
v.)	
	)	Application No. 86/050,581
J & N SALES, LLC,)	
	)	Mark: RHYTHM IN BLUES
Applicant.)	

**APPLICANT'S RESPONSES TO OPPOSER'S REQUESTS
FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Applicant J & N Sales LLC responds, pursuant to 37 CFR 2.120(a) and Fed.R.Civ.P. 34(b)(2), to Opposer's discovery requests served November 11, 2014. Documents and things are to be produced pursuant to the Board's standardized protective order, 37 CFR 1116(g) and the July 29, 2014 initial scheduling order in this proceeding.

General Objections

Applicant objects to Opposer's requests insofar as they seek information subject to the attorney-client privilege, attorney work product or other privilege or exemption from discovery.

Applicant objects to Opposer's requests insofar as they are vague, indefinite, overly broad, unduly burdensome, seek information that is irrelevant or immaterial to this proceeding, available through other means, or are otherwise not calculated to lead to the discovery of admissible evidence.

Applicant objects to Opposer's requests insofar as they seek information which is confidential or proprietary in nature, or would reveal sensitive business data, trade secrets or other proprietary or confidential information of plaintiffs, subject to application of the Board's standardized protective order or a suitable stipulated protective order.

Applicant reserves the right to supplement and/or amend these responses as information becomes known and available.

Specific Responses

~~1. Representative specimens of all advertising documents and promotional materials, including, circulars, leaflets, signs, direct mail pieces, newspaper and magazine advertisements, telephone book listings, website pages, Twitter pages, Facebook pages, press releases, and any other materials ever used or disseminated by Applicant in connection with the promotion or marketing of its goods, and bearing the mark depicted in Application Serial No. 86050581.~~

Response

Applicant objects to this interrogatory on the ground that it seeks information not likely to lead to the discovery of evidence admissible in this proceeding. Without waiving any objection, Applicant directs Opposer's attention to the web sites identified in Applicant's interrogatory responses and the materials produced herewith.

2. Documents concerning the annual sales in units and dollars for each of the goods identified in Application Serial No. 86050581 and sold under the mark depicted therein.

Response

Applicant objects to this request on the grounds that it is not calculated to lead to the discovery of evidence admissible on Opposer's asserted claim of likelihood of confusion or any potential claim relevant to registrability of the mark Applicant has applied to register alleging a bona fide intent to use it in commerce.

3. Documents concerning Applicant's annual expenditures for advertising and promotion of the goods identified in Application Serial No. 86050581 under the mark depicted therein.

Response

Applicant objects to this request on the grounds that it is not calculated to lead to the discovery of evidence admissible on Opposer's asserted claim of likelihood of confusion or any potential claim relevant to registrability of the mark Applicant has applied to register alleging a bona fide intent to use it in commerce.

4. Documents concerning the classes of customers for Applicant's goods identified in Application Serial No. 86050581 sold under the mark depicted therein.

Response

Applicant objects to this request on the ground that it seeks information not likely to lead to the discovery of evidence admissible in this proceeding. Without waiving any objection, responsive materials are produced herewith.

5. Documents concerning the media channels by which Applicant promotes or markets, or intends to promote or market, the goods identified in Application Serial No. 86050581 under the mark depicted therein.

Response

Without waiving any objection, responsive materials are produced herewith.

6. Documents concerning Applicant's first knowledge of Opposer's use of the mark for clothing.

Response

Applicant objects to this request on the ground that the term "mark" as used in this request is vague and undefined.

7. Documents concerning Applicant's first knowledge of Opposer's use of the mark RHYTHM for backpacks or day packs.

Response

Without waiving any objection, Applicant responds there are none.

8. Documents concerning each report, study, survey, investigation, or analysis conducted by or on behalf of Applicant and relating to Opposer or its mark RHYTHM.

Response

Without waiving any objection, Applicant responds there are none.

9. Documents concerning each report, study, survey, investigation, or analysis conducted by or on behalf of Applicant and relating to the likelihood of confusion between Opposer's mark RHYTHM and the mark depicted in Application Serial No. 86050581.

Response

Without waiving any objection, Applicant responds there are none.

10. Documents concerning Applicant's selection of the mark depicted in Application Serial No. 86050581.

Response

Without waiving any objection, applicant will produce any nonprivileged documents responsive to this request.

11. Documents concerning Applicant's adoption of the mark depicted in Application Serial No. 86050581 for the goods identified therein.

Response

Without waiving any objection, applicant will produce any nonprivileged documents responsive to this request.

12. Documents concerning Applicant's first use of the mark depicted in Application Serial No. 86050581 for each of the goods identified therein.

Response

Applicant objects to this request on the grounds that it is not calculated to lead to the discovery of evidence admissible on Opposer's asserted claim of likelihood of confusion or any potential claim relevant to registrability of the mark Applicant has applied to register alleging a bona fide intent to use it in commerce.

13. Documents concerning Applicant's continuous use of the mark depicted in Application Serial No. 86050581 for each of the goods identified therein, since the date of first use.

Response

Applicant objects to this interrogatory on the grounds that it is not calculated to lead to

~~the discovery of evidence admissible on Opposer's asserted claim of likelihood of confusion or any potential claim relevant to registrability of the mark Applicant has applied to register alleging a bona fide intent to use it in commerce.~~

14. Documents and things concerning Applicant's business reputation and/or the reputation of its goods identified in Application Serial No. 86050581 and sold under the mark depicted therein.

Response

Applicant objects to this request on the ground that it is vague and indefinite insofar as the term "business reputation" as used in this request is vague and undefined.

15. Documents concerning each trademark search, service mark search or investigation conducted by or for Applicant, concerning the mark depicted in Application Serial No. 86050581, or any variation of that mark.

Response

Applicant objects to this request on the grounds that it seeks information protected by the attorney-client privilege and attorney work product exemption from discovery. Without waiving any objection, Applicant will produce a copy of the report identified in response to Opposer' interrogatories.

16. All memoranda, reports, studies, market plans, or the like, relating to the marketing or potential marketing of the goods identified in Serial No. 86050581 under the mark depicted therein.

Response

Applicant objects to this request on the ground that it seeks information not likely to lead to the discovery of evidence admissible in this proceeding. Without waiving any objection, applicant will produce any nonprivileged documents responsive to this request.

17. Market studies, surveys, opinion polls, or other samplings of attitudes relating to the mark depicted in Application Serial No. 86050581.

Response

Without waiving any objection, Applicant responds there are none.

18. Market studies, surveys, opinion polls, or other samplings of attitudes relating to Opposer's mark RHYTHM.

Response

Without waiving any objection, Applicant responds there are none.

19. Documents concerning any incident of actual confusion on the part of any person, between Opposer's mark RHYTHM and the mark depicted in Application Serial No. 86050581.

Response

Without waiving any objection, Applicant responds there are none.

20. Documents concerning any incident in which a person expressed, implied, or suggested any uncertainty, confusion, or mistake about the source, sponsorship, or affiliation of the goods offered by Applicant under the mark depicted in Application Serial No. 86050581.

Response

Without waiving any objection, Applicant responds there are none.

21. Documents concerning the geographic area in which Applicant has used, or intends to use, the mark depicted in Application Serial No. 86050581 for the goods identified therein.

Response

Without waiving any objection, Applicant will produce any nonprivileged documents concerning geographic areas in which it intends to use the mark.

22. Documents concerning any plans of Applicant to expand its use of the mark depicted in Application Serial No. 86050581, including, but not limited to, expansion as to the type of goods sold, consumer base, or geographical market area.

Response

Without waiving any objection, Applicant responds there are none.

23. Documents comprising or reflecting any authorization, license, franchise, assignment, or grant from Applicant to any other person or entity, giving the other person or entity the right to use the mark depicted in Application Serial No. 86050581, or to market products or services under that mark.

Response

Without waiving any objection, a more complete response is subject to further search and investigation.

24. Documents concerning any litigation or other legal proceeding involving Applicant's mark depicted in Application Serial No. 86050581.

Response

Applicant objects to this request on the grounds that it seeks information protected by the attorney-client privilege and attorney work product exemption from discovery. Without waiving any objection, Applicant responds there are none other than related to this proceeding.

25. Documents concerning any design plans and/or artwork relating to the Applicant's mark depicted in Application Serial No. 86050581.

Response

Without waiving any objection, Applicant will produce any nonprivileged documents responsive to this request.

26. Documents concerning any symbolism, connotation(s) and/or linguistic significance relating to the Applicant's mark depicted in Application Serial No. 86050581.

Response

Without waiving any objection, Applicant will produce or refer Opposer to any nonprivileged documents responsive to this request.

27. Photographs or samples of each of the goods identified in Application Serial No. 86050581 and sold or distributed under the mark depicted therein.

Response

Without waiving any objection, Applicant will produce or refer Opposer to documents responsive to this request.

28. Documents identifying each website at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods identified therein.

Response

Without waiving any objection, Applicant will produce or refer Opposer to documents responsive to this request.

29. Documents identifying each website at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods and/or services of others.

Response

Without waiving any objection, Applicant will produce or refer Opposer to documents responsive to this request.

30. Documents identifying each of the media, including social media (and social media websites), at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods identified therein.

Response

Without waiving any objection, Applicant will produce or refer Opposer to documents responsive to this request.

~~31. Documents identifying each of the media, including social media (and social media websites), at which the mark depicted in Application Serial No. 86050581 is displayed in connection with the goods and/or services of others.~~

Response

~~Without waiving any objection, Applicant responds there are none.~~

32. Documents identifying each of the trade shows at which Applicant has displayed the mark depicted in Application Serial No. 85955722.

Response

Without waiving any objection, Applicant responds there are none.

33. Documents identifying each of the trade shows at which the mark depicted in Application Serial No. 85955722 has been displayed in connection with the goods and/or services of others.

Response

Without waiving any objection, Applicant responds there are none.

34. Referring to Interrogatory No. 18 in the Opposer's First Set of Interrogatories in this matter, documents that support applicant's contention that the applied-for-mark is a double entendre or has more than one meaning.

Response

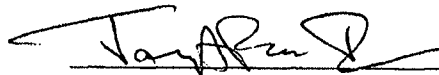
Without waiving any objection, Applicant will produce or refer Opposer to any documents it may have that are responsive to this request.

35. The documents identified in Applicant's response to Opposer's First Set of Interrogatories to Applicant.

Response

Without waiving and subject to any objections, Applicant will produce or refer Opposer to documents responsive to this request.

New York, New York
December 31, 2014



James A. Power Jr
POWER DEL VALLE LLP
233 West 72nd Street
New York, New York 10023
212-877-0100
jp@powerdel.com
Attorneys for Applicant